



Reclamation Advisory Memorandum

From: John Small, Acting Commissioner *J.N.S.*

Date: January 17, 2018

Subject: Shadow Area: Statutory and Regulatory
Changes

RAM # 165

Introduction

SMCRA and the federal regulations promulgated pursuant thereto do not require the permitting of the surface overlying underground mine workings ("shadow area"). Kentucky House Bill (HB) 234, which became effective on June 29, 2017, amended KRS 350.060 (12), to remove the requirement to permit shadow area. Passage of HB 234 makes Kentucky's SMCRA program consistent with the federal program. Shadow area above underground mines or auger area are no longer required to be permitted in Kentucky. Surface effects of underground mining (i.e. subsidence, ventilation shafts, and bore holes) must still be permitted and bonded.

In order to implement the statutory change under HB 234, amendments to the Kentucky Administrative Regulations (KAR) in Chapter 405 were made. Changes have also been made to the MPA-00, MPA-03, MPA-06 and MPA-09 application forms due to removal of shadow area from the permitted acreage.

The Kentucky Department for Natural Resources continues to require permitting of "underground only" mines within Kentucky. An "underground only" mine has underground only area in Kentucky and has an entrance in a neighboring state and/or is associated with another permit that shares the same mine opening. New and amended regulations have been promulgated to govern the permitting of "underground only" mines. 405 KAR 20:090 was promulgated to govern "underground only" permits. Additionally, Section 9 governing "underground only" permits was added to 405 KAR 8:050 which governs permits for special categories of mining.

Key Considerations

The following are some of the key considerations relating to the foregoing statutory and regulatory changes:

- Underground mine and auger area boundaries are still required to be shown on the application maps and drawings, and provided in shape files.

- Underground mine and auger area acreage are still required to be provided in the application forms. However, they are no longer designated as permit acreage.
- Surface owner names and addresses must be listed for proposed permit area and shadow area in Item 9.1. Public notice must still be provided to all owners and occupants of surface property and structures above the shadow area at least ninety (90) days prior to mining beneath the property or structure pursuant to 405 KAR 18:210 Section 2.
- Underground mine and auger acreage for currently issued permits will not be reissued to remove the acreage from the permit. The acreages will be corrected in subsequent permitting actions.
- For pending permit actions involving shadow area, actions that have not been deemed technically acceptable (TAC) the Division of Mine Permits will issue a temporary withdrawal (TWW) letter with a deficiency requiring the applicant to revise the permit acreage chart in the new application forms (version 10 of the MPA-03).
- Addition of underground acreage can be submitted by the applicant in a minor revision. While the Kentucky Administrative Regulations provide for a fifteen (15) day technical review clock on minor revisions, additional review time may be added at the discretion of the Director of the Division of Mine Permits depending on the complexity of the application and/or size of the area to be added through revision.
- Mineral right of entry will not need to be provided for shadow area associated with underground operations.
- Underground slurry injection and coal mine waste disposal permitting requirements do not change under these statutory and regulatory changes.

If you have any questions or comments about this RAM, please contact the Director of the Division of Mine Permits, 300 Sower Blvd, Frankfort, KY 40601 or call (502) 782-7242.